



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

OCTOBER 14, 2003

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: None

LATE: None

STAFF: Community Development Director (CDD) Bischoff, City Attorney (CA) Leichter, Planning Manager (PM) Rowe, Senior Engineer (SE) Creer and Minutes Clerk Johnson. Mayor Kennedy's attendance in the audience was acknowledged.

Chair Mueller called the meeting to order at 7:03 P.M.

#### **DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Mueller opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

#### **MINUTES:**

**SEPTEMBER 23, 2003 COMMISSIONERS ACEVEDO/WESTON MOTIONED TO APPROVE THE SEPTEMBER 23, 2003 MINUTES WITH THE FOLLOWING AMENDMENTS:**

**Page 3, paragraph 2: Safety and Security was increased from 5 to 10 points; Natural and Environmental was reduced from 15 to 10. Also insert "10 point" between "new" and "category"**

**Page 4, next to last paragraph: (D) (E); following "indicate that" *the first come, first served units must meet minimum scores.***

**Page 4, last paragraph, line 3: following "where" ~~housing types competition~~ category**

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Page 8 next to last paragraph, first sentence: (Insert) peer *review*

Pg 11 par 4: ~~catchment~~ *detention*

Page 16, paragraph 6: Commissioner Acevedo said he would welcome the Church, and was impressed with the work proposed for the City's youth. "However," he said, "this is the premier Business Industrial Park in town and I question the suitability of the location for a church."

Page 18, RESOLUTION NO. 03-78 (clarification of 'No' VOTES): ACEVEDO, LYLE (both of whom observe this is a premier business industrial park; also questioned was the suitability of the location for a church)

**THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: ESCOBAR; ABSENT: NONE.**

## OLD BUSINESS:

*At the request of the applicant, agenda item 4 was heard at this time.*

### **4) ZAA-01-05: MONTEREY- SOUTH VALLEY DEVELOPERS**

A request for an amendment to the approved mixed use office/retail Planned Unit Development (PUD) on a 6.22-acre site located at 18605 Monterey Rd. at the intersection of Cochrane Rd. and Monterey Rd. The applicant seeks to amend the PUD language to allow the following: 1) up to 6,010 sq. ft. for restaurant space on Lot 3; 2) expansion of the office on Lot 4 to 32,000 sq. ft.; 3) a fence of wrought iron, or an equivalent material, opposite the Capri Restaurant; and, 4) a reciprocal parking agreement for up to 27 parking stalls to be shared between Lots 3 and 4.

PM Rowe reported that the data necessary for evaluation of the proposal has not been received yet. The generation of the information will hinge on the determination of the exact nature of changes to the PUD, PM Rowe said.

Commissioner Benich said that he read in the staff report a mention of an 'expansion' to the facility, but in actuality there will be a reduction in size from 36,000 sf to 32,000 sf. PM Rowe agreed this is the plan.

Chair Mueller opened the public hearing.

With no persons present indicating a wish to speak to the matter, the public hearing was closed.

**COMMISSIONERS ESCOBAR/ACEVEDO MOTIONED TO TABLE THE MATTER OF ZAA-01-05: MONTEREY-SOUTH VALLEY DEVELOPERS, UNTIL THE DATA NECESSARY FOR EVALUATION OF THE PROPOSAL HAS BEEN RECEIVED, THAT DATA BEING DEPENDENT UPON THE RESOLUTION OF THE PRECISE CHARACTER OF CHANGES TO THE PUD. THE MOTION PASSED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

*Items 1 and 2 were reported in tandem by PM Rowe*

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**1) ZA-02-16/SD-02-11/  
DAA-02-09:DEWITT-  
MARQUEZ/  
GLUHAICH** A request for approval of a zoning amendment to Residential Planned Development for the larger five parcel, 9.45-acre area on the west side of DeWitt Ave. within which the subdivision will be developed. The RPD will be developed with a total of 21 single-family residences. Applicant also requests approval of a 5-lot single-family residential subdivision and development agreement amendment on an existing two-acre parcel located on the west side of DeWitt Ave. approximately 700 ft. south of the DeWitt Ave. intersection with W. Dunne Ave.

In the staff report, PM Rowe presented a brief overview of the history of the project. The residents of the area have expressed opposition to having Price Drive opened to DeWitt Ave, he said. Particularly noted have been the objections on the basis of lack of sidewalks and limited sight ability. Consequently, as part of the preparation for the report this evening, traffic consultant personnel of Fehr and Peers had been asked to reevaluate the potential traffic patterns for the conclusion of the project. PM Rowe gave a summary of the traffic improvements required, and noted that there may be some increase in traffic to the area, but most of the traffic will be generated within the neighborhood.

PM Rowe and SE Creer agreed that the storm water drainage plans are consistent with the area-wide drainage plan. PL566 projects, PM Rowe informed, deal with channel improvements in this area, as there has not been the capacity to absorb increased drainage. Possible alternatives to current use would be installation of larger pipes along with variations of placement of those pipes. SE Creer spoke on the area wide detention plans.

PM Rowe called attention to Item 2, the Development Agreement, stating that Item 9 beginning on page 3 and continued to page 4 should be deleted because the project does not propose any attached housing.

Commissioner Engles asked PM Rowe to review the Measure P allocations awarded this project. PM Rowe complied, noting that these were two separate project applications in the beginning, with the first being awarded five units in a Micro Measure P decision. Part of this application contained the stipulation of a full street where property right-of-way was being negotiated. This negotiation failed and the developers were 'boxed into the purchase of the entire adjoining property in order to obtain the ability to have a street' PM Rowe explained. Subsequently, he told the Commissioners, the developers submitted a four-unit application. All the allocations are in place, PM Rowe informed, and have received approvals.

Commissioner Weston asked about the history of the street stub, inquiring if this installation were a condition imposed by the Fire Department? PM Rowe and SE Creer provided information indicating that the stub is part of the 'full street segment' and that utilities infrastructure is present under the street.

Continuing, PM Rowe said that staff looked at the turf block/gate installation for slowing traffic as suggested by Commissioner Benich and Weston at the last meeting. "There is no precedence for such action on public City streets in Morgan Hill," he declared. PM Rowe indicated that an alternative possibility would be to turn the linkage for the streets over to a Homeowner's Association (HOA); however, the storm

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drainage system is within the public street right of way, he said, and if the streets became private (HOA ownership) an easement for access to the drainage system would still be required. "There is a need for the City being able to maintain the infrastructure," PM Rowe stated.

Turning again to the traffic report, PM Rowe called attention to the possibility of tightening the turns to slow traffic the area.

Commissioner Acevedo asked SE Creer whether a proposed golf course in the area could receive detention water? SE Creer said the water from this project would be channeled to Monterey Road and ultimately Little Llagas Creek. Chair Mueller informed that at the Urban Limit Line Study Committee meeting, the golf course proposal had been dropped at the property owner's request. Commissioner Lyle said the (formerly proposed) golf course was located on ground higher than the project.

Chair Mueller opened the public hearing.

Bill McClintock, P.O. Box 1029, of MH Engineering, said the applicants agree with the staff report, including all the recommendations, and are ready to submit plans. He called attention to 'one slight change' in the precise development plan, dealing with the square footage of lot 13.

Commissioner Weston asked for clarification where the street extension will match the existing installation. Mr. McClintock responded and spoke on the potential system for the roads and streets. Commissioner Weston questioned the drainage plan which has most of the storm water going off Price and John Telfer Drive toward Dewitt under the existing development (Spring Manor) through an existing storm-drain pipe. Mr. McClintock said the existing pipe is large enough to handle the drainage. "The pipe that is in is OK for the capacity to the mitigation ponds," Mr. McClintock said.

Commissioner Engles asked if the Price Drive extension to DeWitt would have sidewalks? Mr. McClintock answered affirmatively.

With no others present to address the matter, the public hearing was closed.

Commissioner Lyle indicated that the traffic analysis presents a 'high ball, worse case scenario' as he described his thinking on the possibility of different routes to and through the development. "It makes no sense that the traffic engineer assigned traffic to the extension of John Telfer north of W. Dunne Avenue from West Dunne west of John Telfer, or John Telfer north of West Dunne, to John Telfer south of West Dunne," he said. "I believe there will be less traffic at the beginning of John Telfer. If there is a shorter way for traffic through the area, it will be better for the City," Commissioner Lyle declared.

Chair Mueller said he is still concerned about the circulation, noting the 'blind driveways' approximately half way between Dunne and Price drive and the blind turns in the area.

Commissioner Lyle said the balance of through traffic not being increased would offset that worry.

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Discussion ensued regarding the travel patterns of existing residents, with Commissioner Lyle continuing to assert that 'outside traffic' will show little increase in the area, and that most of the traffic will continue to be generated by the residents and their guests.

Commissioner Weston said he didn't understand the need for extension of Price Drive to DeWitt.

Chair Mueller indicated the 600-foot extension was a major issue for the Fire Department, then noted that the grade exceed the Fire Department standards.

Commissioner Escobar offered an alternative by suggesting that Price Drive be made one-way (to the west) from Loop road to John Telfer Drive, explaining this would help residents who are concerned.

Commission Engles said that at the last meeting, he had naively expressed support for a gate in the area. However, he has revisited the area and strengthened a belief that most of the traffic will be generated from within the existing area. It should have been clear, Commission Engles continued, to all purchasers that Price Drive would eventually go through to Dewitt. "No one from the north end of Dunne on John Telfer will go down Price," Commission Engles said. "It's time to put this matter to rest. The street needs to go through."

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-72, RECOMMENDING APPROVAL OF A ZONING AMENDMENT FROM THE COUNTY OF SANTA CLARA HS-ST TO CITY OF MORGAN HILL RESIDENTIAL R1-12000/RPD RESIDENTIAL PLANNED DEVELOPMENT OVERLAY FOR TWO PARCELS AND A PRECISE DEVELOPMENT PLAN FOR THE ENTIRE 5-PARCEL RPD LOCATED ON THE WEST SIDE OF DEWILL AVENUE, 700 FEET SOUTH OF THE DEWITT AVENUE INTERSECTION WITH WEST DUNNE AVENUE. THE MOTION WAS SECONDED BY COMMISSIONER LYLE.**

Commissioner Weston said he liked Commissioner Escobar's suggestion for compromise [Price Drive be made one-way (to the west) from Loop road to John Telfer Drive].

Chair Mueller asked staff to comment on this idea of one-way (to the west) from Loop road to John Telfer Drive. PM Rowe responded there was no recommendation by staff on the matter as it was not previously discussed, and suggested that if the Commissioners are interested in pursuing the proposal, staff would need to do an evaluation.

Commissioner Escobar pointed out that the alternative proposal had been in response to the neighborhood asking for alternatives.

Chair Mueller said that perhaps some 'serious traffic calming' measures could be considered for the area, including sharpening the turns (road curves).

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PM Rowe reminded that there would be a 'negligible' amount of traffic using the roads, and that as Commissioner Lyle had previously observed, this would be mainly from the residents and their guests.

Commissioner Lyle said that traffic calming measures could be added later if staff investigation warranted doing so.

**THE MOTION (RESOLUTION NO. 03-72) CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLS, ESCOBAR LYLE; NOES: MUELLER (who wished to have traffic calming measures included),**

**WESTON (who stated his concerns:**

**[1] traffic calming measures would be beneficial**

**[2] continued objections to the extension of the street as being 'not necessary' and**

**[3] the issue of the retention ponds being located on Rocke Garcia's property and not on City property – as he noted that there was a property exchange with Mr. Garcia and the City at the old SunSweet plant site where the City approved Farmers' Market is now located;)**

**ABSTAIN: NONE; ABSENT: NONE.**

*Commissioner Engles left the meeting at 7:33 p.m.*

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-73, APROVING A FIVE (5) LOT SUBDIVISION CONSISTING OF FIVE (5) SINGLE-FAMILY RESIDENTIAL LOTS ON A TWO-ACRE PORTION OF A 9.45 ACRE RESIDENTIAL PLANNED DEVELOPMENT PROJECT SITE LOCATED ON THE WEST SIDE OF DEWITT AVE., 700 FT. SOUTH OF THE DEWITT AVENUE INTERSECTION WITH WEST DUNNE AVENUE. THE MOTION WAS SECONDED BY COMMISSIONER LYLE AND PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLS.**

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-74, RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION, DAA-02-09, FOR APPLICATION MMP-02-02: DEWITT-MARQUEZ TO ALLOW FOR A THREE-MONTH EXTENSION OF TIME FOR FINAL MAP SUBMITTAL AND A SIX-MONTH EXTENSION OF TIME FOR BUILDING PERMIT SUBMITTAL FOR FOUR (4) BUILDING ALLOTMENTS AWARDED IN THE 2002 RDCS COMPETITION. COMMISSIONER LYLE SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLS.**

**2) ANX-03-02/  
SD-03-05/DA-03-05:  
DEWITT-MARRAD  
GROUP**

A request for annexation of two parcels (2 acres each) totaling 4 acres located on the west side of DeWitt Ave. approximately 700 ft. south of the DeWitt Ave. intersection with W. Dunne Ave. into the City of Morgan Hill. Applicant also requests approval of a 4-lot single-family residential subdivision on the northernmost parcel of the two parcels being considered for annexation and approval of a residential development

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agreement for the project.

**Note:** *The staff report for this agenda item (2) had been delivered at the same time as agenda item 1, with Commissioners discussing the two items concurrently .*

Chair Mueller opened the public hearing

With none present indicating a wish to speak to the matter, the public hearing was closed.

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-75, RECOMMENDING APPROVAL OF THE ALTERATION OF THE BOUNDARIES OF THE CITY OF MORGAN HILL BY ANNEXATION THERETO OF CERTAIN TERRITORY DESIGNATED “DEWITT AVENUE NO. 2”, AND WITHDRAWAL OF SAID TERRITORY FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT. COMMISSIONER LYLE SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES.**

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-76, APPROVING A 4-LOT SUBDIVISION CONSISTING OF 4 SINGLE-FAMILY RESIDENTIAL LOTS ON A TWO ACRE PORTION OF A 9.45 ACRE RESIDENTIAL PLANNED DEVELOPMENT PROJECT SITE LOCATED ON THE WEST SIDE OF DEWITT AVE., 700 FT. SOUTH OF THE DEWITT AVENUE INTERSECTION WITH WEST DUNNE AVENUE. THE MOTION WAS SECONDED BY COMMISSIONER LYLE AND PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES.**

*Commissioner Engles returned to his seat at 7:39 p.m.*

**COMMISSIONER ACEVEDO OFFERED RESOLUTION NO. 03-77, RECOMMENDING APPROVAL OF RESIDENTIAL DEVELOPMENT AGREEMENT DA-03-05 FOR MMP-03-02: DEWITT-MARQUEZ/GLUHAICH WITH THE FOLLOWING MODIFICATIONS:**

**(PAGE 3 OF THE RESIDENTIAL DEVELOPMENT AGREEMENT) DELETE ITEM 9(d).**

**EXHIBIT B: DATES ON ITEMS V (BUILDING PERMITS) AND VI (COMMENCE CONSTRUCTION) WILL BE ADJUSTED.**

**COMMISSIONER LYLE SECONDED THE MOTION WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: ENGLES; ABSENT: NONE.**

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### NEW BUSINESS:

**3) AP-03-04:  
FOOTHILL-  
COMMITTEE FOR  
GREEN  
FOOTHILLS/SANTA  
CLARA VALLEY  
AUDUBON  
SOCIETY**

Appeal of the Community Development Director's approval of a Temporary Use Permit to allow operation of a private golf course located at 14830 Foothill Avenue in the O-S, Open Space zoning district.

PM Rowe presented the staff report, giving an overview of the history of the development sequence at the private gold course, including the application amended in February 2003 requesting to zone the 192-acre site Planned Unit Development (PUD). He explained that the current zoning is O-S (Open Space).

PM Rowe explained that the City is currently engaged in the preparation of an EIR regarding the PUD application and the applicant's request for City approval of the continued operation and maintenance of the golf course existing on the property. He said that the golf course was constructed on the site without benefit of a permit and environmental review. PM Rowe called attention to Exhibit A, which is the list of 'Conditions of Approval'. An EIR, he explained, is usually submitted before the project is permitted, announcing that a revised Draft EIR will be distributed for public review later this month.

Continuing, PM Rowe clarified that the golf course does exist so the conditions of approval are to be applied through a Temporary Use Permit (TUP) approved by CDD Bischoff. PM Rowe explained the process for the TUP, including the required reports from various agencies asked to address the issues, e.g., pesticide application and water quality, as well as having the responsibility for enforcement. PM Rowe said the applicants appear to have made 'good faith' effort to meet the conditions stipulated in the August 27, 2003 TUP, which was the second TUP granted by the City. The application was forwarded to several regulatory agencies for review and comment.

The Audubon Society and Committee for Green Foothills, citing the City's failure to complete the required environmental documentation prior to the approval of the TUP, PM Rowe said, filed this appeal. The appellants requested the conditions of the TUP be modified in three areas:

- Elimination of fertilization and pesticide application on the entire site.
- Within a two-week period from amendment of the TUP, delineate those areas of the course that can be mowed (restricted to a bare minimum – tees, fairways and greens only) and those that cannot be mowed.
- Specify that any violations of a condition of the TUP or other requirements of permitting agencies would automatically trigger the shutting down of the entire site (no usage, no watering, and no mowing).

The Audubon Society and Committee for Green Foothills also requested a waiver of the fees required for filing an appeal on the basis of acting for the public good.

PM Rowe gave the details of the applicant's plans, including provision of meeting the



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condition of riparian restoration.

Attention was called to letters received from the Committee for Green Foothills dated October 13, 2003, which was indicated to be a 'follow up to the appeal of TUP No. 03-10: Foothill Ave – The Institute. PM Rowe clarified that the Planning Department staff was not recommending the Commissioners approve the request(s) contained in the letter. "In fact, the City staff believes that maintaining the status quo would be less disruptive than shutting down the operation," PM Rowe said. He resumed the staff report by speaking to the opposition points raised by the appellant, noting that the City's Code Enforcement Officer normally handles many of the items.

PM Rowe provided information that in 1996 the applicant applied to reconstruct a (restaurant) building on the site, and inquired about grading on the site. This course went far beyond the original application and talks with the staff, he said.

PM Rowe introduced the following persons who have been involved with this matter: CDD Bischoff, Roger Beers, an Attorney contracted by the City for work on the appeal and TUP provisions, and City Attorney Leichter.

Chair Mueller announced that he had attended a meeting with the project applicants and had toured the golf course this date.

Commissioner Acevedo asked if potable water is provided to the facility as a City service? It was ascertained that only sewer was hooked to the site and not City water.

Commissioner Engles queried as to other possible uses at the site.

Commissioner Weston expressed concern that the applicant was granted a first, then a second TUP. He inquired of CA Leichter the possibility of a 'hold harmless' clause in the TUP ensuring that the City is not held responsible for environmental damage. CA Leichter responded that there is standard 'hold harmless' language in the TUP, adding that she suspects that the City could be named a party to any suit filed in the matter, but the applicant would be required to provide the legal defense.

Chair Mueller explained the action and the request that is before the Commissioners, utilizing a 'straw vote' to determine the willingness of the Commissioners to hear the appeal.

Commissioner Weston stated that he would vote to not open the hearing for appeal. "More information is needed," he stated.

Commissioner Escobar said the matter should be opened, noting that the City has been criticized for limiting the scope of the project in total. "Hearing this appeal is germane to the issue. We have a civic obligation as Commissioners to hear this appeal," he said. **COMMISSIONER ESCOBAR OFFERED A MOTION THAT THE APPEAL BE HEARD.**

Commissioner Engles said the appeal should be heard, noting that most of the parties were present.

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Chair Mueller reminded that the appeal is limited to three specific items (listed above).

Commissioner Weston said he was concerned about some of the agencies to which the matter had been referred, saying that the Commissioners are being asked to agree or disagree with information they may not fully possess.

### **COMMISSIONER LYLE SECONDED THE MOTION.**

Commissioner Acevedo asked for clarification of the letters received in the packet which were delivered by e-mail within the last 48 hours.

Chair Mueller said this is a *de novo* hearing, which allows for more latitude in discussion than a standard appeal hearing. The Commission, for example, will be able to consider new evidence not addressed in the appeal letter.

### **THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR LYLE, MUELLER; NOES: WESTON; ABSTAIN: ENGLES; ABSENT: NONE.**

Beginning with a statement of procedure – and order of - for the speakers: *favoring the appeal (appellant), the applicant for the project, and open public hearing time for the general public*, Chair Mueller opened the public hearing.

Brian Schmidt, Committee for Green Foothills, 3921 East Bayshore Rd., Palo Alto, clarified *with the City Attorney* that the City Council is the proper body for addressing the waiver of fees. He also indicated that the representative for the Audubon Society was not able to be present at the meeting. Mr. Schmidt thanked the City staff for being helpful and noted that the applicant has been cooperative in providing information.

Mr. Schmidt said the main issue is what has been done within the scope of a TUP. He questioned if such approval is proper without input from the Planning Commission? In what Mr. Schmidt termed significant impacts, he referenced the lack of an initial study (environmental documentation), listing issues he indicated should have been raised. “The City has a duty to err on the side of caution,” Mr. Schmidt declared, “and the Planning Commissioners should have been consulted.”

Commissioner Weston asked if Mr. Schmidt was aware that the project was already built? “Yes,” replied Mr. Schmidt, “this project was illegally built – and somehow that appears to give the applicant an advantage here.” The City has the option of telling the applicant what they can do: it is up to the City to determine if this will be a permanent course or if the illegal operation should be torn out. Mr. Schmidt continued that the City staff speaks of ‘due process’ but not direct correction of violations. “This permit is only for seven months,” he stated, “there is a need to firm up the ability to deal with any violations.”

Turning to the other agencies’ and the comments received in the responses, Mr. Schmidt called attention to the objections of Fish and Game, saying that the e-mail from them indicated that CEQA requirements had been by-passed. Mr. Schmidt also said that the Santa Clara Water District letter said monthly reports for water quality are

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required.

Commissioner Engles asked exactly what Mr. Schmidt wanted? “We don’t want the project to be discontinued. This is not the right time for that action. Because CEQA requirements were not done, the concerns involved with this project can’t be identified at the present time,” Mr. Schmidt replied.

Commissioner Engles said, “But if we stop now, this will be an eyesore for the City. I don’t know how shutting it down would help. I see enough fail safes to protect the City in the areas of concern being voiced.” Commissioner Engles went on explain that it appears the applicant is meeting/dealing with the issues raised by Fish and Game and the Water District.

Mr. Schmidt said that the City asserts certain responsibilities for oversight, but there are no standards for monitoring the water quality. “I specifically asked the Water District,” Mr. Schmidt indicated and calling attention to the last paragraph of the correspondence from the Water District. “Their personnel said that this paragraph should not be taken as an interpretation of acceptance/approval or guarantee of the impacts.” Mr. Schmidt said the City should be able to agree on the impacts.

Chair Mueller asked the City Attorney to comment on the time frames for civil action brought by a Code Enforcement Officer. CA Leichter said that it usually takes 6 – 8 months, but the City currently has no Code Enforcement Officer and some cases take up to two years to be heard.

Mr. Schmidt said it is important that the golf course operators obey the law.

Commissioner Acevedo reiterated the three issues of appeal Mr. Schmidt is requesting.

Stephen Sorenson, P.O. Box 1448, Morgan Hill, spoke to the Commissioners, responding to the three items of appeal:

Elimination of fertilization and pesticide application on the entire site.

There is no need for this, Mr. Sorenson explained, as the operators use science for determining the amounts of feeding required for various areas of the installation. He went on to explain specifically the testing methods for treatments. Mr. Sorenson also said that the TUP requires water testing on site and in the area creeks, explaining the test results as presented. He said that three test wells are required to be drilled for the testing procedures.

Within a two-week period from amendment of the TUP, delineate those areas of the course that can be mowed (restricted to a bare minimum – tees, fairways and greens only) and those that cannot be mowed.

Mr. Sorenson said the TUP does not show where the mowing occurs. “Over time, we are replacing turf with trees, flowers and shrubs – and we are doing this voluntarily,” he said.

Specify that any violations of a condition of the TUP or other requirements of permitting agencies would automatically trigger the shutting down of the entire site (no usage, no watering, and no mowing).

Mr. Sorenson cautioned that elimination of activity at the site could make environmental matters worse. Currently, he said, there is no damage to the

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water and the red-legged frog is afforded protection.

Commissioners called attention to the following items:

Permits required for the three test wells (Mr. Sorenson said permits were being processed by the Water District.

The well monitoring plan developed by Aquifer Sciences.

Water quality monitoring in Corralitos Creek and the reporting dates of the monitoring.

Proposed maintenance for the winter months (Mr. Sorenson indicated that the turf would be permitted to grow *higher* during the six months off-season, with fertilization about twice, utilizing minimalized application to ensure nutritional emphasis to the grounds.

Commissioner Escobar asked why it is essential to have the operation now? "Can't we have an interim period until this matter is resolved?" he questioned. Mr. Sorenson responded that it is important to note that no golf is being played at the present time, and they just wish to maintain the grounds as indicated.

Commissioner Lyle clarified that the fertilization is conducted twice during the off-season, with Mr. Sorenson stating that to be a fact as far as he knew. Commissioner Lyle continued by asking about the frequency of mowing? Mr. Sorenson responded that mowing occurs daily during the season and sometimes every three days or every couple of days during the off-season, depending on the weather.

Mr. Schmidt suggested that the Water District be consulted regarding the TUP and the issues/concerns raised.

Commissioner Weston referenced the reports in which the golf course personnel said there is less nitrate in the water. Copies of the reports are available, he was assured.

Commissioner Engles expressed concern that persons outside the City appear to be a driving force regarding concerns of the project.

Randy Long of RCL Ecology, 329 Mt. Palomar Place, Clayton, spoke to the Commissioners, clarifying the water sampling process. He indicated that he had been involved with the distribution of information to the named agencies, telling of information exchanges at meetings with representatives of those agencies.

With no other persons indicating a wish to speak to the matter, the public hearing was closed.

PM Rowe explained the excerpt from the Water District fax received in the Planning Department this date and the verbal communications with the District representatives, indicating what was said for the Commissioners' benefit.

Chair Mueller suggested that the Commissioners focus on the three items of appeal.

Michelle Yesney of David J. Powers & Associates, 1885 The Alameda, San Jose, who is contracted by the City for preparation of the EIR, said that the draft document is being circulated and there would be 'substantial' revision. Ms. Yesney indicated

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anticipation that the document would be to the Commissioners before the end of the month.

Commissioner Lyle asked about the time frame for the final EIR presentation? Ms. Yesney said that following the review by the Commissioners, there is a 45-day review for the public and identified agencies, which would bring the time for the Consultants to work with City staff to mid-December, with the document going to the City Council in mid-January. She also noted that these time frames were an optimistic hope.

Commissioner Weston asked if the EIR would address the pesticide *issue* which has been raised? He said that there appears to be the potential for pesticide and other additives to affect the area ground water. Mrs. Yesney said the pesticide issue is not specific to the TUP, but can be dealt with from other received reports in the EIR.

Commissioner Acevedo said that based on the anticipated schedule, the EIR should be approved before the expiration of the TUP.

*Commissioner Benich left the meeting at 9:20 p.m. and returned at 9:21 p.m.*

Chair Mueller again suggested that the three items of appeal be addressed.

Commissioner Lyle said that as to #1) Elimination of fertilization and pesticide application on the entire site, the applicant has made several good points by indicating that over the next few months the fertilizer and pesticide applications will be very minimal. "I believe this is almost a moot issue," Commissioner Lyle said.

Commissioner Benich commented that there appears to be already quite a few controls in place and he is happy with the applicant's plans.

Commissioner Escobar said that the controls appear to be good ones as planned. "We could ask the applicant to submit current fertilizer and mowing plans," he said. Others concurred this to be a good idea.

Commissioner Acevedo indicated that he agrees with the appellant's concerns, but felt that those concerns had been addressed in the TUP. "The TUP as prepared is acceptable," Commissioner Acevedo said. "However, the real question is whether the TUP is the proper method for such a big project? Perhaps we should consider some limits: if a project is beyond a certain size, maybe it should come to the Planning Commission. But to this specific issue, the TUP is well written and is in place."

Commissioner Engles made a point of saying he agreed with Commissioner Acevedo.

Commissioner Weston suggested a modification: The applicant says that he plans to fertilize two times during the off-season, with the Consultant indicating the fertilization plan is being reviewed and the report will be submitted soon. "I think it may be a good idea to stop the process now. I don't see any adverse reaction if we stop it now until we get the final EIR. That way we would have more documentation

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to support decision-making. We should do that now when there is no golf course activity,” Commissioner Weston declared.

Chair Mueller said he sides with the majority of the Commissioners, and further stated that he agrees with the stipulation of a written fertilizer and mowing plan.

Commissioner Weston said he feels it appears that the Water District would agree to a written fertilizer and mowing plan.

Chair Mueller reminded that Commissioners needed to focus on the vote for the grounds of appeal.

**COMMISSIONERS BENICH/ENGLES MOTIONED TO DENY THE *FIRST ACTION OF APPEAL* AND KEEP THE TUP AS IT NOW EXISTS. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER; NOES: WESTON; ABSTAIN: NONE; ABSENT: NONE.**

CDD Bischoff commented that City staff agrees that the TUP guidelines and requirements for larger projects should be reviewed by the Commission.

Regarding the second issue of appeal (Within a two-week period from amendment of the TUP, delineate those areas of the course that can be mowed (restricted to a bare minimum – tees, fairways and greens only) and those that cannot be mowed) Commissioner Weston said this should be denied, as grass grows less in winter so there is no reason for this requirement.

Commissioner Engles indicated agreement with that stance.

Commissioner Acevedo said he agrees with the way the appeal was written in this case, but thinks the plan suggested will suffice.

Commissioners Lyle, Benich, and Escobar indicated an interest in having this provision denied.

Chair Mueller said he was leaning to not requiring more minimalization than is occurring now. The plan suggested can be studied and then if necessary the Planning Commission could ask for minimizing mowing.

**COMMISSIONERS ESCOBAR/WESTON MOTION TO DENY THE SECOND ACTION OF APPEAL. THE MOTION PASSED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT.**

Turning to appeal item #3: Specify that any violations of a condition of the TUP or other requirements of permitting agencies would automatically trigger the shutting down of the entire site (no usage, no watering, and no mowing), Commissioner Engles said he believes that this is punitive and that any enforcement action belongs to the City through Code Enforcement action.

Commissioner Acevedo said that any violations of permits should be considered on a

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case-by-case basis and should not be automatic.

Chair Mueller asked if the Commissioners agreed that the applicant indicates a willingness to follow City code?

Commissioner Lyle said he is not pleased with the past actions, and the way things were done. "I'm glad that CDD Bischoff says the procedure of granting TUPs will be studied for reconsideration."

Commissioners Benich and Weston, along with Chair Mueller said that procedures are in place for corrective measures if warranted.

**COMMISSIONERS ESCOBAR/WESTON MOTION TO DENY THE THIRD POINT OF APPEAL. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Chair Mueller directed that the record should show the complete Chronological Report prepared by the City of what has transpired to bring the project into compliance. He continued that the TUP is a way to get some control of the site. "The ~~Planning Commission~~ TUP is the appropriate way to get control before finalization of the environmental document," Chair Mueller said. ~~"It provides the opportunity to say 'why the TUP?' and why the Planning Commission agrees with the TUP — this is an excellent way to gather information. It provides an excellent way to gather information and protect the environment for species of concern while the EIR is being written and going thorough the approval process."~~ He concluded by asking that documentation be prepared by staff to show the City's action through out the process.

**COMMISSIONERS ESCOBAR/ACEVEDO MOTIONED TO CONTINUE THE MATTER UNTIL THE NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING TO PERMIT THE COMPLETION OF FINDINGS FOR RESOLUTION OF DENIAL. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

### 5) ZA-03-13: CITY OF MORGAN HILL-ZONING TEXT AMENDMENT/ ATTACHED HOUSING

A request to amend Title 18 of the Municipal Code to modify the definition of attached single-family dwellings, add a new definition for modified setback dwellings, and to establish design standards for modified setback dwellings.

AP Tolentino presented the staff report, remarking that the Commissioners had been made aware of the several changes in the insurance industry impacting the construction of new ownership attached housing. Commissioners were reminded that most insurance carriers will no longer provide construction liability coverage for any project containing attached housing or the premiums have substantially increased. AP Tolentino explained the proposed comprehensive Ordinance which was presented. The general provisions of the Ordinance includes:

1. An amendment to the 'attached dwellings' definition of the Municipal Code to include modified setback dwellings.

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2. The addition of 'modified setback dwellings; and 'Z-lot' definitions to the Municipal code;
3. Eligibility criteria and design standards for modified setback dwellings; and
4. Review procedures for current and future projects proposing to incorporate modified setback dwellings.

AP Tolentino called attention to specific changes proposed:

Section 10 (a) of the Ordinance, the following language is added to the end of paragraph "a": "....., except as provided in Sections 15 through 19 of this ordinance".

Section 11 (n) the following language is added: In cases of equal side yard widths, the RPD shall identify to which property owner primary access and exclusive use is granted."

Section 11 (p) Addition of the word 'rain' at the beginning of the sentence.

AP Tolentino continued by talking about the (possible) design features to give the appearance of attachment. She also pointed out that the Ordinance has a sunset clause and is viewed as an 'interim solution' to a vexing problem.

Commissioners discussed the rationale of the Ordinance with Staff.

Chair Mueller opened the public hearing.

Rocke Garcia, 100 E. 3<sup>rd</sup> St., said the subcommittee had been very productive, adding, "However, I see this solution as being temporary."

Dick Oliver, 275 Saratoga Ave. #105, Santa Clara, explained the features designed to fit the ordinance. He then engaged in discussion with Commissioners and Staff regarding the necessity of meeting Municipal Code and the Uniform Building Code in formulating the points in the Ordinance.

With no others present to speak to the matter, the public hearing was closed.

Chair Mueller asked about the affordable housing units requirements. Staff and the developers present employed dialogue to address the issue of affordable housing relating to Measure P.

Commissioner Acevedo said that regarding the design change, the units do not appear to be attached as shown in the schematics provided. He went on to question the points for these units under Measure P, saying his thinking is that there is room for argument on whether the point should be awarded for 'style'. Commissioner Acevedo called attention to Section 8 A and B, saying that his personal preference would be to the portion of the definition requiring that the modified setback dwellings ~~'give the appearance of attachment'~~. he did not care if this or isn't, but that it is important to be clear that it is not attached housing.

Chair Mueller said he favored deferring to the ARB on that issue and having the Board look at specific designs.



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**COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-82, INCLUSIVE OF THE MODIFICATIONS OUTLINED BY STAFF:**

**Section 10 (a) of the Ordinance, the following language is added to the end of paragraph “a”: “....., except as provided in Sections 15 through 19 of this ordinance”.**

**Section 11 (n) the following language is added: In cases of equal side yard widths, the RPD shall identify to which property owner primary access and exclusive use is granted.”**

**Section 11 (p) Addition of the word ‘rain’ at the beginning of the sentence.**

**RECOMMENDING APPROVAL TO ALLOW MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING. THE MOTION WAS SECONDED BY COMMISSIONER LYLE AND CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

*Commissioner Escobar was excused at 9:53 p.m. for the next agenda item due to potential conflict of interest.*

**OTHER BUSINESS:**

**6) CITY  
ENDORSEMENT OF  
VTA COMMUNITY  
DESIGN AND  
TRANSPORTATION  
BEST PRACTICES  
MANUAL**

A request to endorse the Valley Transportation Agency’s (VTA) Community Design and Transportation (CDT) Program and adoption of the CDT Manual of Best Practices for Integrating Transportation and Land Use.

PM Rowe gave the staff report saying that VTA is asking endorsement of the CDT program. He clarified that what was being discussed was the best practices manual.

Chair Mueller opened the public hearing.

With no members of the public showing an interest in speaking to the matter, the public hearing was closed.

Commissioner Lyle explained that he was ‘leaning toward voting against the matter’ and would offer his explanation during discussion of a motion.

**COMMISSIONERS WESTON/BENICH MOTIONED TO APPROVE ENDORSEMENT OF THE VALLEY TRANSPORTATION AGENCY’S (VTA) COMMUNITY DESIGN AND TRANSPORTATION (CDT) PROGRAM AND ADOPTION OF THE CDT MANUAL OF BEST PRACTICES FOR INTEGRATING TRANSPORTATION AND LAND USE.**

Commissioner Lyle said, “I don’t want to vote for or against this motion. So I will abstain for this reason: We (the City of Morgan Hill) are not required to do everything ‘as applies to the community’ and my concern is that at some point in time some over zealous individual *or organization will endeavor to REQUIRE Morgan Hill to rigidly adhere to some recommended ‘best practice’* will want Morgan Hill to do something about a problem. We could be handing out some rope to hang ourselves by embracing this document.”

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**THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, MUELLER, WESTON; NOES: ENGLER; ABSTAIN: LYLE; ABSENT: ESCOBAR.**

*Commissioner Escobar returned to his seat at 10:05 p.m.*

### **7) SCHEDULE FOR RDCA (MP) AFFORDABLE COMPETITION**

PM Rowe presented the staff report, noting that this matter deals with the affordable housing category of the Measure P competition. A workshop was held in September, 2003 where comment was provided on a proposed mixed-use commercial and residential development to be located north of Wright Avenue between Monterey Road and Del Monte Avenue. The development will be 'Royal Court; and include 60 affordable dwelling units to be constructed by South County Housing, a local non-profit housing agency.

PM Rowe informed that the Business Assistance and Housing Services staff is not aware of any competing affordable projects planning for the upcoming competition. He suggested that it may be in the best interest of the City and the developer to add fluidity to the time lines of the application.

Commissioner Lyle suggested if the time for filing deadline could be the first of February, there would still be time to process the application once the General Plan amendments and changes had been voted on. "If there is not modification of the deadline filing," he said, "there could be a redistribution and this project could be delayed for a year." Commissioner Lyle explained several possible scenarios, then asked whether the applicant would favor a later application deadline? "Whatever the deadline is, we know there can't be a final ~~answer about the variation or~~ staff scoring until there is actually submission to the Planning Commission. It would be nice if *the General Plan amendment and project scoring timelines ran in parallel.*" Commissioner Lyle said the February 1, 2004 final application might work for the applicant, but the General Plan changes would not be completed by that time.

PM Rowe said the Commissioners could ask the City Attorney to study the matter of changes in the dates and advise on the subject.

Commissioner Weston said a concern was not being able to attract competitive applicants for the affordable housing category within one year.

Chair Mueller talked about projects presented previously, saying the later filing date would encourage more input in this way.

Chair Mueller opened the public hearing.

David Heindel, South County Housing representative, said the agency owns the land and would like to get started with the project as soon as possible. He reiterated the process of application, saying the agency wants to build 16 units in the first phase. Mr. Heindel spoke on the time line constraints of beginning the cycle now.

Commissioner Lyle said the current application deadline is December 1, then asked if a later date would be beneficial?

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Mr. Heindel responded, "It would help a lot! The application is quite detailed. With the considerable need for engineering, December 1 would be a real push. February 1, 2004 would be much better."

With no others present to address the matter, the public hearing was closed.

Commissioner Acevedo said he is not opposed to the date change, but expressed concern such action may be setting a precedent.

Chair Mueller said that over the years, there have been modifications for the affordable housing category. "It boils down to when they can get the funding," he explained.

PM Rowe provided the background for the rationale of moving the affordable housing application date to February 1, 2004.

Chair Mueller said the City has helped make this category more accessible and viable with providing flexibility in the past and there have not been complaints from the open-market developers. "Usually the affordable housing people want the final filing dates as late as possible," he said.

PM Rowe clarified that the project will contain 60 units at build out, but this application will consider 16 units.

Discussion came about regarding the compatibility of this project with the downtown high-density expectations.

It was determined that it would be possible for provisional scoring by staff for the project to be given to the Commissioners timely so that the project could be expedited.

Commissioner Acevedo asked when the General Plan change would be finalized? PM Rowe said that is scheduled for the City Council's second meeting in April 2004.

**COMMISSIONERS LYLE/WESTON MOTIONED TO RECOMMEND TO THE CITY COUNCIL THAT A LATER FILING DEADLINE (FEBRUARY 1, 2004) BE ESTABLISHED FOR THE AFFORDABLE HOUSING COMPETITION. THE MOTION PASSED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT.**

**ANNOUNCEMENTS:** Commissioner Engles said he is concerned about projects where residents voice concern, not being familiar with the community, that they have bought property in an area which is developing adverse to their belief of what would be happening to nearby property. He cited the area near the Ford Store as an example. Commissioner Engles suggested a land use summary be made available to potential purchasers. Told that this information is available at City Hall, Commissioner Engles suggested the matter be agendaized for discussion.

PM Rowe gave the report on City Council actions:

- October 1 the Council approved the Development Agreement for Central Park; and the Development Agreement for Sunnyside/Quail Creek.

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- The updates to the Residential Development Control system will be to the Council on October 22 or November 5, 2003.
- November 11, 2003 there will be a special joint meeting of the City Council and the appointed Boards of the City for the purpose of training. This will occur before the regularly scheduled Planning Commission meeting.

Chair Mueller asked the progress of the training for better comprehension of traffic reports. This will be scheduled.

Commissioner Weston called attention to a letter from AAM Techronics. PM Rowe informed the firm is in the process of getting offsite plans approved, and this is the responsibility of the Public Works Department. Planning staff has worked with the applicant to assist in understanding of the process.

Commissioner Benich asked the status of the Sinaloa (restaurant) use permit? PM Rowe said the permit will expire in November, 2003, and the applicants have been informed and are planning to rebuild once the points of contention with other agencies are resolved.

Commissioners Weston and Benich announced plans to attend the BART tour.

### **ADJOURNMENT:**

With no further business to come before the Commission, Chair Mueller adjourned the meeting at 10:40 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**